

**MEETING SUMMARY
SEPTEMBER 26, 2007
WIND POWER TASK FORCE MEETING**

I. Introductory Matters

Meeting focus. Chair Alec Giffen welcomed those in attendance and opened the meeting by outlining its informational goals and focus (see meeting agenda), which involve getting ideas and issues on the table rather than to attempting to debate and resolve them at this stage.

Community wind. Representative Bruce MacDonald distributed an outline of the proposed general framework of the work plan, scope, and focus of the Task Force's subcommittee on community wind. (Note: This document is available on the project website with other materials from the Task Force's September 26, 2007 meeting.) Representative MacDonald explained that, as subcommittee chair, he will work with Representative Fitts and other members of the Task Force who wish to serve on the subcommittee, to develop a draft report defining "community wind" and making recommendations for how to enhance opportunities for development of community wind projects in Maine. He further noted that John Weber of the State Planning Office (SPO) will provide staff assistance to the subcommittee which also intends to seek input from interested members of the public.

II. Presentations on DEP and LURC Permitting Processes

❖ **David Littell, Commissioner, Maine Department of Environmental Protection (DEP)**

Commissioner Littell gave a PowerPoint presentation outlining the DEP regulatory authorities potentially applicable to a wind power development. Commissioner Littell's presentation is available on the project website. In general, Commissioner Littell observed, laws administered by DEP that are applicable to wind power proposals are pro-development and objective in that they authorize development activities if established standards are met. He noted that decisions under applicable laws, as implemented by DEP rules, are based on scientifically-based standards as opposed to balancing of policy considerations. He further noted that, as contrasted with LURC, DEP is not a planning agency and that DEP addresses projects case by case on their merits as proposed. Commissioner Littell advised that the Site Location of Development Act (site law) and other generally applicable environmental laws provide DEP the tools it needs to effectively regulate wind power project proposals and that DEP does not see the need for or utility of an industry-specific regulatory scheme for wind power.

In response to questions, Commissioner Littell offered the following additional information and clarifications:

- As a general matter, DEP does not favor use of balancing tests for permitting decisions since tests may in effect vest in those making permitting decisions (staff or BEP) policy decisions better addressed though statute or rule, and thus may make permitting decisions less rather than more predictable. Accordingly, the laws and rules DEP administers rely

for the most part on objective, science-based permitting criteria. While acknowledging that the Maine Waterway Development and Conservation Act (MWDCA), which governs state hydropower permitting, does employ a balancing test, Mr. Littell suggested that the MWDCA does not appear to be a useful model for facilitating siting and development of wind power. Mr. Littell opined that, even in the absence of explicit balancing requirements in law, as a practical matter there is potential for BEP members' views to be influenced by information regarding the energy-related benefits of a wind power project.

- With appropriate changes in law, it would be possible to accommodate consideration of wind power's energy and air pollution-related benefits into DEP's existing decision making process, e.g., by incorporating another agency's determination or recommendation on such issues.
- Under current law, DEP may consider a project's cumulative effects in relation to similar past but not prospective projects; and thus DEP's cumulative impacts inquiry is based on factual information not conjecture about speculative, future development.
- At the developer's request, DEP may consolidate multiple permits into a single approval.
- Although an argument may be made that the “unreasonable” impact standard under the NRPA, site law and other laws administered by DEP in effect calls for balancing of a proposal's benefits and detriments and thus allows for consideration of CO2 benefits, such an interpretation would pose difficulties as applied to wind power projects. Difficult questions of trade-offs arise since the benefits of wind power, e.g., those related to renewable energy, are not directly related to its adverse effects, e.g., impacts on avian and scenic resources.
- As a practical, policy matter, DEP may at times, in its discretion, expedite consideration of a project with demonstrable public benefits, e.g., large number of jobs at stake. In such cases, there is no change in the regulatory requirements which must be met.
- DEP is currently reviewing information to determine whether the Mars Hill project is in compliance with the noise-related aspects of its permit. As a regulatory agency, DEP's focus is on the issue of permit compliance, whereas Mars Hill residents may have additional issues and concerns regarding project-related noise.
- Under DEP's noise rules, it is the developer's responsibility to provide information that shows pertinent requirements will be met. DEP determines what studies and information, including potentially sound propagation modeling, are required on a case by case basis. DEP does require noise measurements at the project boundary and determination of ambient noise levels in some cases.
- DEP rules in effect address differences in acceptable noise levels in rural and generally noisier urban areas through consideration of local zoning and land use requirements, as compared to the ISO's 30db standard for rural areas.
- The Task Force has discussed two potentially divergent approaches to managing wind power development: facilitating siting in relatively remote areas distant from populated

areas; and discouraging siting of wind power in remote areas to protect their natural resources and other attributes. These policy objectives appear to conflict.

- Except as otherwise provided by statute directing or forbidding BEP to assume jurisdiction over a specific type of project, the BEP may assume jurisdiction over a project on its own initiative or on request in accordance with DEP's chapter 2 rules. Due to the adjudicatory nature of the BEP process, it typically takes from 12-18 months to reach final decision on a matter over which the BEP has jurisdiction.
- A state law modeled after NEPA might provide a vehicle for ensuring full consideration and even balancing of a wind project's benefits and detriments but establishment of such a new program would be costly and thus unlikely in light of state budget constraints.
- The NRPA's criterion requiring avoidance of undue adverse effects does not on its face preclude development of wind resources in fragile mountain areas over 2700 feet if development elsewhere (not in a protected resource) may be possible. DEP has interpreted other NRPA provisions to require directional drilling to avoid adverse impacts on vernal pool resources and to require consideration of alternative routes for power lines that may run over or require placement of poles within wetlands areas. Consistently with advice from the Attorney General's office, DEP has interpreted scenic resources management provisions in the site law and NRPA are imposing somewhat different requirements on developers. In general, the site law provides DEP broader authority regarding protection of scenic resources.
- While there may be issues regarding municipal capacity to review small wind power projects that are not subject to state review, DEP does not suggest expansion of its jurisdiction as a means to address it.

❖ Catherine Carroll, Executive Director, Land Use Regulation Commission (LURC)

Catherine Carroll provided an overview of LURC's project review and decision-making process regarding proposed wind power development. Ms. Carroll began her presentation by stating that her comments are her own and not those of the Commission and are not intended to suggest or imply her views or that of the Commission on any particular project proposal but to provide a general conceptual understanding of the process. The following are main points of Ms. Carroll's presentation:

- LURC is a relatively small agency with a staff of 25 and annual budget of @\$2 million.
- The Commission (as opposed to the executive director exercising delegated authority) makes all siting decisions regarding wind power development and related transmission projects. To date, LURC has approved one grid-scale wind power project, the Kenetech project in the 1990's; although a number of other projects are pending before the Commission.

- LURC's process for review of wind power projects is two-tiered: rezoning and site review/permitting. To date, wind projects in LURC have required consideration of rezoning areas above 2700 feet in elevation from "protected mountain area subdistrict" to a planned development zone (D-PD). Once rezoned, a project is evaluated under the D-PD approval criteria. These generally applicable (i.e., not wind power specific) criteria are intended to ensure consideration of a proposal's potential impacts on and avoid "unreasonable harm" to the environment, natural resources (including bird and bat populations) and other public values. Ms. Carroll noted that the outline of the state regulatory framework applicable to wind power projects (available on the project website) accurately outlines LURC's approval authorities and decision making criteria.
- Under current law, DEP (but not LURC) may assume jurisdiction over linear transmission projects associated with wind power development that are located in both the organized and unorganized areas. Ms. Carroll questioned whether the impetus for this provision stemmed in part from considerations regarding wind power development as indicated in the above noted framework document.
- While acknowledging room for improvement in its approach, Ms. Carroll emphasized that LURC has the ability and resources to address any project that may come before it and that, accordingly, there is no need for a moratorium or other such means to ensure meaningful review of wind development proposals. She observed that the Commission may face a number of challenges in making its decision on wind power projects. Ms. Carroll opined that interpretation and application of decision making criteria under current rezoning and D-PD criteria to wind power development projects are particularly challenging. Ms. Carroll further observed that considering wind power projects' potential regional energy and related benefits in relation to RGGI and other energy policy matters while at once assessing their more localized effects appears particularly difficult for the Commission.
- LURC's 1997 revision to its comprehensive plan called for a statewide wind power siting study, which has not been undertaken. Ms. Carroll suggested that the idea of a such study with the general objective of advance identification of areas suitable for wind power development merits further consideration, although it may prove practically infeasible and ineffective at minimizing siting conflicts, due in part to changes in technology making wind power development economic in more and more geographically varied areas (e.g., lower elevation).
- In 2007, LURC is again revising and updating its comprehensive plan, which includes sections on energy and related issues. Anticipated issues regarding the plan's energy section include options for zoning wind power development, e.g., allowance for wind power development in the general management zone and options for consideration of wind power projects' CO₂ related benefits. Ms. Carroll explained that the Commission will be taking up the draft comprehensive plan at its October 2007 meeting and welcomes public comment.

- In recent years, DEP, LURC and SPO worked together to develop draft guidance regarding consideration of wind power development proposals. The Task Force may wish to recommend finalization of this guidance.
- In concluding, Ms. Carroll suggested that the Task Force may wish to create a subcommittee to develop recommendations on suggested improvements to the LURC and DEP siting processes for wind power.

In response to questions, Ms. Carroll provided the following additional information and clarifications:

- The laws that LURC administers do not distinguish between large and small wind power projects for either regulatory or zoning purposes. LURC addresses each project on its merits, case by case.
- The criteria LURC uses to assess and address visual effects focus on identifying and minimizing potential adverse effects. In replying to the Task Force's questions regarding certain details about LURC's rules and criteria regarding scenic effects (scope of viewshed considered, e.g., areas visible from public areas only) and noise (post-construction noise control standards), Ms. Carroll suggested that she confer with her staff and follow up with additional information as necessary. She clarified that LURC's noise control and scenic effect rules differ somewhat from those administered by DEP.
- LURC's undue adverse impact criteria may allow the Commission to consider a wind power project's CO2-related benefits, although, Ms. Carroll affirmed, there is no explicit statutory or policy direction regarding consideration of such benefits and the Commission has not interpreted pertinent standards in this manner to date. (Such an approach, Commissioner Littell observed in response to a question, would be different than DEP's approach under pertinent laws it administers.) Ms. Carroll noted that further policy direction to guide the Commission in considering this and other energy policy related issues, including possibly that provided by a state energy plan, would be beneficial. Commissioner Littell concurred from DEP's perspective.
- LURC's rezoning standard is challenging to interpret and use as applied to proposals to rezone high mountain areas to planned development zones to accommodate wind power development. Ms. Carroll suggested that it is unlikely for a single dwelling or for utility connection to trigger the need for rezoning, although as the nature of activities in LURC territory has changed, rezoning requirements have also been applied to residential and commercial subdivisions. Ms. Carroll concurred that provisions regarding determination that a proposed location is the "best available site" and that the area rezoned will have a "substantially equivalent level of protection" have, along with the determination regarding the "need" for the rezoning (and thus arguably for the project itself), proven especially difficult for the Commission as applied to wind power development proposals. She explained that, conceptually, the "substantially equivalent" protection standard involves consideration of uses allowed under current zoning and the scale of the proposed development, as weighed against the undue adverse impact standard. The "best available site" standard, she explained, involves a look at ownership issues to help frame the universe of possible sites and then an alternatives analysis of the possible sites identified.

Ms. Carroll observed that development of additional guidance and clarification on these and other siting related issues would be helpful to developers as well as the Commission itself. David Wilby suggested that the interpretative issues created by language of LURC's rezoning and site review criteria make LURC's review process less predictable and noted that clarification of such criteria would aid in focusing the review process on factual matters regarding a project's potential effects.

III. Discussion Draft - Issues Associated with Permitting of Wind Power Projects in Maine

Pete Didisheim presented to the Task Force a handout regarding issues associated with siting wind power projects in Maine which he developed in consultation with Juliet Browne and David Wilby. Mr. Didisheim explained that the purpose of the handout is to identify a list of areas where improvements to the existing regulatory system are needed to enhance its clarity and predictability. In keeping with the terms of the Executive Order creating the Task Force, Mr. Didisheim explained, any such improvements are meant to apply prospectively and not affect wind power projects now subject to the state permitting process.

IV. Appalachian Mountain Club's (AMC) Wind Power Siting Analysis of Maine Mountains

David Publicover of AMC gave a PowerPoint presentation on research that AMC has done to develop a GIS-based methodology and analytical tool for characterizing the suitability of sites in Maine's mountainous areas for wind power development in light of available wind resources and other natural resources-related features and uses. The presentation is available on the project website. Mr. Publicover noted that this is a work in progress, completion of which is expected in October 2007.

In response to questions, Mr. Publicover provided the following additional information:

- While information on the location of existing transmission lines may be useful, access to good and current information is lacking due in part to security concerns. In addition, there are a number of factors other than proximity, such as topography and soil type, that are important when evaluating transmission-related issues. Mapping and analysis of such issues in a useful manner would be complex, expensive, and difficult.
- Although it does address the natural resource issues that a developer would likely consider, this analysis does not address some issues, such as site-specific wind direction and topography, that tie directly to a potential project's economic viability which a developer would likely consider when looking at siting options. Consequently, this analysis does not itself provide a basis for calculation of the number of acres in Maine's mountainous areas most suitable for wind development, from which calculation one might then estimate the total power production potential from that land area.
- Given its policy focus, AMC has focused its efforts on mountainous areas and has not planned a comparable effort regarding Maine's coastal areas, which may present more complex issues given different land use patterns and other factors.

- The analysis does not include detailed information on the location of rare, threatened or endangered species or significant habitat, due to concerns that have been expressed in the past regarding general publication of such information. Steve Timpano suggested that Mr. Publicover contact DIFW if it wishes to include this information as it is now more readily available for publication.

V. Comments Concerning Perceptions of Existing Permitting Processes, Ideas and Proposals for Improvement or Change

The Task Force heard comments from the following interested persons who presented issues and concerns regarding current approaches to regulation of wind power development in Maine, as well as ideas on how to address those issues and concerns.

❖ Orlando Delogu, Emeritus Professor of Law at the University of Maine School of Law

Professor Delogu presented a memorandum he prepared suggesting consolidation of the State's currently "fragmented" approach to siting of wind power generation and related transmission facilities into a single approval authority charged with considering projects' beneficial energy-related effects as well as environmental effects. Under the proposal outlined in Professor Delogu's memo (available on the project website), the Maine Public Utilities Commission would exercise this consolidated authority for commercial scale projects, with advice from DEP and LURC, as appropriate, on environmental issues. Professor Delogu explained that his proposal does not address small scale community wind projects.

Several Task Force members expressed interest in further consideration of consolidation of state approval authority for wind power into a single entity. In response to questions, Professor Delogu offered the following additional information and clarifications:

- It is his understanding that some other states address wind power regulation through a single approval authority, although information on the comparative advantage of this approach as opposed to that under prior law might not be available, in part because wind power laws are relatively new.
- While wind power is the current focus, the whole spectrum of renewable energy generation opportunities in Maine should be appropriately utilized in light of global climate change considerations.
- Fragmentation of state regulatory authority results in additional and increasingly unreasonable demands on volunteer citizen boards, including notably BEP and LURC, whose work loads are likely to continue increasing.
- Emergence of renewed interest in nuclear power generation, as evidenced by two recent applications in the United States, suggests that wind and other renewable energy resources will increasingly be competing with nuclear power to replace fossil fuels.

From an environmental perspective, it should be evident that wind and other renewable resources are preferable.

❖ **Steve Bennett, Resident, Town of Freedom**

Mr. Bennett described the town of Freedom's approach to consideration of a wind power development proposed for that community as an example of a "failed process." Mr. Bennett said he does not want to see the types of issues and concerns among neighbors to the Mars Hill wind project arise in Freedom. Mr. Bennett suggested that municipalities do not have the technical capacity to review commercial wind power projects and may be unduly swayed by projects' potential tax-related benefits. In response to questions regarding his views on the proper state role regarding regulation of wind power, he suggested that the Task Force develop minimum siting guidelines regarding project setbacks, noise, and comparable matters, for use by voluntary planning boards and other municipal officials. Chair Alec Giffen noted that, although it is unlikely that the Task Force itself would produce such a detailed product, the Task Force could recommend initiation of a process for development of such guidance by others with pertinent expertise.

❖ **Wendy Todd, Resident, Town of Mars Hill**

A resident of Mars Hill, Maine, living about ½ mile from the UPC wind power project there, Ms. Todd stated that noise generated when the wind turbines are operating has adversely affected her quality of life and that of her neighbors in the Mars Hill community in a variety of ways, including the following:

- Sleep disturbance, irritability and related relationship difficulties arising from prolonged exposure to noise and shadow flicker effects; and
- Displacement of wildlife.

Ms. Todd noted that recent studies suggest a link between exposure to wind turbine-generated noise and human health problems and expressed concern that such health issues may be surfacing in the Mars Hill community. She expressed concern about the project's potential detrimental effects on the value of her home and neighboring real property. Ms. Todd also stated that Mars Hill's tax increment financing (TIF) agreement with UPC resulted in a \$249,000 reduction in state education funding under the school funding formula.

Ms. Todd stated that the turbine-generated noise of concern to her and her neighbors is somewhat variable in quality (pitch, duration and timbre) and dependent on wind speed, with little noise of concern occurring when turbine blades are spinning at less than 15 rps. She emphasized that one must live with the noise for days or weeks to appreciate its adverse effects and, accordingly, suggested that those investigating noise issues at the Mars Hill project consult with those living in proximity to the project. Ms. Todd suggested that assurance of proper setback distances could address many noise-related problems. In response to a question regarding what might be an appropriate set back distance from the Mars Hill project, she noted

that wind projects' noise effects are dependent on terrain and other factors and that noise related concerns with the Mars Hill project seem to dissipate at around one mile from the project area.

Ms. Todd expressed concern that information provided by the developer did not appropriately explain the project's implications on a number of issues including:

- Local employment benefits;
- Use of project-generated electricity;
- Stabilization of the community's cost of electricity; and
- Potential construction and operations related issues (e.g., blasting, ice and blade throw, and lightning strikes)

Ms. Todd questioned whether the project has had demonstrable carbon dioxide reduction related benefits. Acknowledging the desire to encourage wind power in Maine, Ms. Todd emphasized protection of wind power projects' neighbors as a key responsibility of the Task Force in developing its recommendations.

❖ **Josh D'Agnato, UPC Wind**

Josh D'Agnato, speaking from wind power developer's perspective, emphasized that timeliness, certainty and predictability are chief among the hallmarks of an efficient and effective regulatory framework. He related that, in UPC's experience, Maine regulatory authorities have generally done a good job in meeting decision-making timelines and schedules and in this way have enhanced predictability, timeliness and certainty associated with securing regulatory approval in Maine. Mr. D'Agnato did note that uncertainties regarding timing of elements of LURC's decision making process for UPC's Stetson project created some difficult practical, logistics related problems. Mr. D'Agnato suggested that Maine's regulatory framework should take wind projects' CO2 emissions-related benefits into account as is the case in Massachusetts. Mr. D'Agnato observed that Maine's regulatory agencies seem under-staffed. He suggested that any changes in Maine's wind power policies should be embedded in law so that they continue past the term of the present administration.

❖ **Philip Ahrens, Environmental Attorney**

Mr. Ahrens suggested that overall little change is needed to elements of the current state regulatory framework in order to facilitate siting of wind power project. From the perspective of a wind development project subject to both DEP and LURC jurisdiction, he noted the following specific differences in the agencies' process and requirements regarding the following:

- Application forms and fees;
- Determination of completeness of an application (DEP ch. 2 rules- completeness decision in 15 days of filing; LURC has no parallel rule or schedule);
- Application processing schedule;

- Use of consultants to facilitate review;
- Decision on when to hold a public hearing (DEP ch. 2 - DEP/BEP use specific criteria to decide a public hearing should be held; LURC has public hearings on all matters)
- Circulation of draft order (DEP - allows applicant and other parties to review and comment on proposed order; LURC - has no parallel rule or established practice);
- Application processing schedule (DEP has established timelines for project review and decisions that LURC does not.);
- Review and approval of meteorological towers (met towers); (DEP - approval generally not required; LURC - approval required. Mr. Ahrens noted that in practice LURC staff has worked to expedite decision on met towers);
- Withdrawal of pending application (Citing recent decisions, Mr. Ahrens suggested that DEP and LURC have taken different approaches to when a pending application may be withdrawn); and
- "No undue adverse impact" determination (LURC - decision is based on balancing; DEP - as explained by Commissioner Littell, decision is based on findings on discrete criteria).

Mr. Ahrens suggested that resolving the above-noted inconsistencies would be useful in facilitating siting of wind energy projects. He further suggested that, without significant change to existing law, agencies could facilitate and encourage development of wind power through interpretation of existing laws. By contrast, he observed, DEP is interpreting comparable rules under the site law and NRPA as imposing different requirements for management of both scenic resources and vernal pools. He suggested that at a minimum the Task Force consider a recommendation that DEP, LURC and other agencies be directed to interpret existing standards and criteria in light of state policy supporting siting and development of wind power.

In response to questions, Mr. Ahrens provided the following additional information and suggestions:

- While increasing uniformity in the state's regulatory approach to wind development is appropriate, it is not clear that either creation a single approval authority (e.g., through consolidating permitting authority in DEP and leaving LURC with planning and zoning authority regarding wind development or designating an energy facility siting board) is needed to accomplish that end.
- The significant burdens on the citizen members of both the BEP and LURC needs to be addressed. Having described how these boards must decide complex decisions on controversial projects involving lengthy hearings, he noted that some have suggested assignment of these responsibilities to a professional board of hearing examiners as an alternative approach.

Following up on Mr. Ahrens' comments, Catherine Carroll offered the following additional information regarding LURC's review process:

- Under its current authority, LURC is not charged with encouraging any form of development but to plan for and manage proposed development fairly in accordance with its comprehensive land use plan;
- DEP and LURC can and have on past projects developed a single, joint application;
- While there may be issues regarding its enforceability, LURC does have a rule calling for an agency decision within 90 days of the public hearing on a matter;
- LURC does have the ability to hire consultants to assist with project review but with limited exceptions has not deemed this necessary for proposed wind power development projects;
- She intends to ask the Commission to consider delegation of decisions on met towers to its executive director and her staff in order to expedite action;
- While LURC does not typically review and discuss findings of fact before directing staff to prepare a draft order in the manner that BEP does, the Commission may take a comparable approach on some matters; and
- On complex projects with lengthy hearings, the Commission will likely assign members to take a lead role regarding certain issues or topics during hearings as a means to make its proceedings more manageable and efficient.

VI. Discussion by Task Force Members

Chair Alec Giffen then reviewed the concept for the Task Force's next meeting. Mr. Giffen explained that, as previously discussed by the Task Force, the proposed meeting focus is on potential options to address identified facility siting related issues. Mr. Giffen indicated that pertinent information on issues and options for further consideration will be distributed prior to the Task Force's October 30, 2007 meeting. The Task Force concurred with this approach.

Pete Didisheim noted that NRCM and others have hired a consulting team, including Bob Grace of the New England Wind Forum, to examine several issues germane to the Task Force's mission, including estimates of the amount of installed wind generation capacity needed to meet RGGI and other pertinent renewable energy and greenhouse gas reduction targets. Mr. Didisheim pointed out that the consultants' report is due October 30, 2007 and offered to arrange for a presentation on its findings at the Task Force's meeting on that date. The Task Force agreed that such a presentation would be useful.

Task Force members agreed to hold November 16, 2007, for a follow up meeting to take up outcomes of its October 30, 2007 meeting and related matters.

